

REMARKS

Favorable reconsideration of this application is requested in view of the above amendments and the following remarks.

Claim 6 has been amended to remove the dotted line between R^c and R^d from the formula (II) as supported by the specification at page 5, lines 17-18, include the limitation of X^a as supported by the specification at page 5, lines 27-28, reduce the optional substituents of the C_{1-6} alkoxy group (iii), which is a substituent of the ring C, from the groups recited in previously presented claim 6, clarify R^d and R^e as supported by original claim 6, and reduce the groups to be R^d and R^e from those recited in previously presented claim 6. Claim 6 further amended editorially. Since claim 6 narrows the selection of the groups for the ring C and R^e from the lists in previously presented claim 6 and clarifies X^a in a way as considered in the September 7, 2010 Office Action, no new issues are raised by the amendments to the claims.

Claim 6 has been objected to because of informalities. The figure (II) of claim 6 has been replaced with a figure having thicker lines. Accordingly, this objection is moot and should be withdrawn.

Claims 6, 10, and 18 have been rejected under 35 U.S.C.112, second paragraph, as being indefinite. Applicants respectfully traverse this rejection.

Claim 6 recites that X^a is an oxygen atom, and the formula (II) does not include the dotted line between R^c and R^d . Accordingly, this rejection is moot and should be withdrawn. Applicants do not concede the correctness of the rejection.

Claims 6, 10, 14, 15, and 18 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Momose et al. (U.S. Patent No. 7,238,716). Applicants respectfully traverse this rejection.

Claim 6 recites the formula (II) in which the ring C is a benzene ring optionally having, in addition to R^d and R^e , further one or more substituents selected from the group including (i)-

(iv) recited in the claim. Claim 6 further recites that one of R^d and R^e is a hydrogen atom, that when R^d is a hydrogen atom, R^e is one of the groups of (i)-(vi) listed in (1) in claim 6, and that when R^e is a hydrogen atom, R^d is one of the groups of (i)-(vi) listed in (2) in claim 6.

Momose discloses an alkanoic acid derivative compound represented by the formula (I) that includes the ring A, to which R^1 -X-Q-Y- is bound, where the ring A is an aromatic ring optionally further having 1 to 3 substitutes. In the formula (I) of Momose, R^1 is an optionally substituted 5-membered aromatic heterocyclic group, X and Y are a bond or the like, and Q is a divalent hydrocarbon group having 1-20 carbon atoms (see abstract).

Even if the group of R^1 -X-Q-Y- were compared with R^d or R^e of the formula (II) of claim 6, none of the substituents for the ring C, other than R^d and R^e , and the substituents listed in the group (1) for R^e and the group (2) for R^d includes a group having a 5-membered aromatic heterocyclic group bonded to a divalent hydrocarbon group having 1-20 carbon atoms, where the divalent hydrocarbon group is bonded to the benzene ring. Thus, the formula (II) of claim 6 is structurally different from the formula (I) of Momose. In general, properties of the chemical compounds that do not include the 5-membered aromatic heterocyclic group bonded to a divalent hydrocarbon group having 1-20 carbon atoms, where the divalent hydrocarbon group is bonded to the benzene ring, such as those of claim 6 would be unexpected from the compounds including such substituent as Momose discloses. Thus, the reference does not teach or suggest the compounds of claim 6, and claim 6 and its dependent claims 10 and 18 are distinguished from Momose.

Independent claims 14-15 do not include the R^1 -X-Q-Y- group of Momose, i.e., the 5-membered aromatic heterocyclic group bonded to a divalent hydrocarbon group having 1-20 carbon atoms, where the divalent hydrocarbon group is bonded to the benzene ring (see abstract). Thus, claims 14-15 also are distinguished from Momose for at least the same reasons as discussed for claim 6 above. Accordingly, this rejection should be withdrawn.

Claims 6, 10, 14, 15, and 18 have been provisionally rejected for nonstatutory obviousness-type double patenting as being unpatentable over claims 13, 16-23, 34, and 38-39 of copending U.S. Patent Application No. 10/534,081. Applicants respectfully traverse this rejection.

Applicants submit herewith a terminal disclaimer over the 10/534,081 copending application. Accordingly, this rejection is moot.

In addition, Applicants submit a verified translation of the foreign priority document Japanese Patent Application No. 2003-394848 of the present application. The international application of the 10/534,081 application filed November 6, 2003 was published in Japanese as WO 2004/041266, and the November 6, 2003 international filing date cannot be the effective prior art date. The November 26, 2003 filing date of the JP 2003-394848 priority document of the present application is prior to the May 21, 2004 publication date of the international application of the 10/534,081 application (PCT/JP2003/014139; WO 2004/041266) and the May 5, 2005 US national stage filing date of the 10/534,081 application. Also, the expected publication dates of the Japanese priority documents of the 10/534,081 application such as JP 2002-324632 filed on November 8, 2002, JP 2003-16889 filed on January 27, 2003, and JP 2003-153986 filed on May 30, 2003 would be May 2004, July 2004, and November 2004, respectively, all of which are later than the November 26, 2003 filing date of the JP 2003-394848 priority document of the present application. Thus, the 10/534,081 copending application also cannot be the prior art under the 35 U.S.C. 102(a) against the present application.

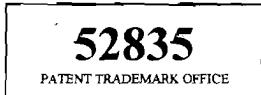
Accordingly, this rejection should be withdrawn. Applicants do not concede the correctness of the rejection.

S/N: 10/580906

Responsive to the Office Action mailed September 7, 2010

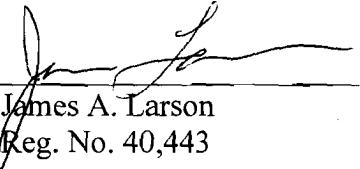
In view of the above, Applicants request reconsideration of the application in the form of a Notice of Allowance.

Respectfully submitted,



HAMRE, SCHUMANN,
MUELLER & LARSON, P.C.
P.O. Box 2902
Minneapolis, MN 55402-0902
Phone: 612-455-3800

Date: February 7, 2011

By 

James A. Larson
Reg. No. 40,443

JAL/DPM/my/jes